Considered alone, the covenant is unquestionably uncertain and affords no basis upon which the relief prayed for could be granted. To merit the interposition of equity, the agreement must be certain in all its parts. *Ward v. Newbold,* 115 Md. 689. However, when viewed in the light of its circumstances and purpose, the meaning was clear. It was designed to prevent the defendant from exerting her influence and popularity in favor of a rival business sufficiently close to vitiate the good will purchased. To construe it to mean "within a radius of ten city blocks" would be to accomplish the objects for which the covenant was made. And such construction, while giving effect to the obvious intention of the parties, would not be going to the extent taken in some cases to effectuate the agreement. In *Boggs v. Friend* (W. Va.), 87 S. E. 873, where the agreement was "not to engage in business in the vicinity or neighborhood," it was held that the "restraint should go to the extent necessary, within the reasonable intendment of the parties, to fully protect the plaintiff. Similarly, in *Hubbard v. Miller, 27* Mich. 15, an agreement not to engage in the business of well-driving (without limitation as to place) was construed "to impose a restraint upon the carrying on of such business at Grand Haven and within such limits about the city as that business would naturally and reasonably embrace." The attitude of the court in the instant case is in marked contrast to the attitude regarding boundaries in conveyances. Wherever possible, the courts will uphold a deed and find in the language used a sufficient description of the property. See note, 21 MICH. L. REV. 86. Perhaps, while not so stated, the result here is due to hostility to restrictive agreements. However, "whether the restriction is against public policy ought to be determined on the facts of the case; and if there is nothing to show that the restriction would injure the public there would seem to be no satisfactory reason for refusing relief." CLARK ON EQUITY, p. 134.

CONTRACTS—ILLEGALITY—CONSIDERATION—RESTITUTION.—In February, 1917, P entered into a written contract to sell coal to D at $2.75 per ton, to be delivered in monthly installments. Under the Lever Act (Sec. 25, U. S. Comp. St., 1918; Sec. 3115⅛ q., U. S. Comp. St. Ann. Supp., 1919) President Wilson in August of 1917, established $2.00 as the maximum ton rate for coal. In October of that year an executive order raised the maximum price 45 cents a ton. By the terms of the act contracts entered into before the establishment of the maximum prices were not thereby invalidated. Deliveries were made under the original contract by P and payments made. After the addition of 45 cents to the price in October by the president, P and D agreed that this was to be added to their contract price, and deliveries and payments were made under the new understanding until March, 1918. After the March and April deliveries, D refused payment, claiming that the demand for the 45 cents additional was illegal. In this suit by P, D asked a set-off for the sums paid in excess of the original contract price. *Held,* that the agreement of October adding 45 cents to the contract price was an illegal contract; that the parties being *in pari delicto,* D could not set-off sums paid in excess of the original agreement; that P was entitled

to recover the original contract price for the coal. *Mancourt-Winters Coal Co. v. Ohio & Michigan Coal Co.* (Mich., 1922), 187 N. W. 408.

Judging from the facts stated in the report, it seems highly probable that the parties never intended to make a new contract at all. Rather, it appears that they felt themselves legally bound to add the 45 cents to their contract price. But assuming that there was an intent to form a new contract, in principle it seems very dubious whether we can spell out a contract from the second agreement. We believe that there was no new consideration moving to D which can support the alleged illegal contract. The seller was already legally bound to deliver the coal. In *King v. Duluth, M. & N. Ry. Co.*, 61 Minn. 482, the court observed: "where the promise is simply a repetition of a subsisting legal promise, there can be no consideration for the promise of the other party, and there is no warrant for inferring that the parties have voluntarily rescinded their contract. * * * The promise cannot be legally enforced, although the other party has completed his contract in reliance upon it." WILLISTON, CONTRACTS, § 130; 34 L. R. A. 33 (note); 6 R. C. L. 918. However, Michigan, along with a minority of the courts, has held such second contracts to be valid. *Moore and others v. Detroit Locomotive Works*, 14 Mich. 266 (delivery of locomotive); *Goebel v. Linn*, 47 Mich. 489 (delivery of ice); *Conkling v. Tuttle*, 52 Mich. 630 (new lease after notice to quit); *Blodgett v. Foster*, 120 Mich. 392 (delivery of lumber); *Scanlon v. Northwood*, 147 Mich. 139 (building contract). See also cases cited in WILLISTON, *supra*. The theory of the court, as laid down by Judge Cooley in the earliest case above cited, was that there was a releasing of the liability for failure to perform the first contract and a substitution of an entirely new contract.

There would seem to be an inconsistency between the second and third points made by the court in the principal case. That the court should deny D a set-off because the parties were "in *pari delicto*" and allow P to recover on the original contract seems illogical and we believe unjustified by the authorities relied upon by the court. The Michigan cases cited in support of this position deny recovery to either party. See, in particular, *Walhier v. Weber*, 142 Mich. 322, 325. 9 CYC. 564, also relied upon by the court, is to the effect that an "illegal agreement will not affect a prior lawful one between the same parties." But in none of the cases cited for this statement was there a rescission or release from the original obligation, an essential incident to the theory of the Michigan court as above stated. It is submitted, therefore, that though the Michigan court was bound, as a matter of *stare decisis*, to arrive at the conclusion it did as to there being a second contract, there is no justification for the difference made between D's right to a set-off and P's right to recover.

CONTRACTS—REPUDIATION—DUTY OF BUYER TO MITIGATE DAMAGES.—The plaintiff agreed to sell and the defendant to buy a carload of flour to be delivered at a subsequent date. Before the time for delivery had arrived the defendant gave notice of his repudiation of the contract. The plaintiff proceeded with the contract, however, and at the time of delivery shipped